IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

MFA.No. 645 of 2001()

OPMV.941/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
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APPELLANT/PETITIONER:

K.T.BALAN ALIAS,BALAKRISHNAN,
S/O.K.KELU, AGED 35 YEARS, KUNDILTHODI HOUSE,
POTTACHIRA, NELLAYA POST, OTTAPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.O.P.NANDAKUMAR
SRI.V.A.AJAI KUMAR

RESPONDENTS/RESPONDENTS:

1.SASIKUMAR,S/O.BALAKRISHNAN NAIR,
AGE NOT KNOWN,JAYA TRANSPORT, GURUVAYOOR.

2.RAVI,S/O.KUNHUMON,AGED ABOUT 34 YEARS,
ATTEPARAMBIL HOUSE, KANHIRAMUKKU POST,
MALAPPURAM DISTRICT.

3.THE NEW INDIA INSURANCE CO. LTD., KUNNAMKULAM.

BY ADV. SRI.P.RAVINDRAN FOR R1
SRI.LAL GEORGE FOR R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.645 OF 2001 (A)

Dated this the 21st day of August, 2007

J U D G M E N T

KOSHY,J.

Appellant/claimant suffered serious injuries in a motor accident on 21.12.1995 in a public road. He applied for compensation claiming an amount of Rs.3,50,300/-. The total amount awarded by the tribunal was Rs.1,52,429/- with interest and costs. But finding that there is 25% contributory negligence, amount awarded was only Rs.1,14,322/-. Quantum of compensation and finding of negligence are disputed in this appeal. With regard to the finding of negligence, the tribunal found that accident occurred due to the negligence of both drivers but 2nd respondent was more negligent because he was driving the offending bus which was driven in a very rash speed and the motor cycle in which claimant was riding was dragged for a distance of about 15.20 metres after the hit. Both 2nd respondent and appellant

were charge sheeted and considering the totality of the case and evidence, 70% negligence was attributed to the bus driver and 25% to the appellant. We are also of the view that tribunal has correctly fixed 25% contributory negligence on the part of the petitioner. There was valid insurance coverage. Respondents have not challenged the findings of negligence.

2. Next ground is regarding the quantum of compensation. With regard to the injuries, tribunal has considered the injuries in a very detailed manner. Tribunal held as follows:

> "Ext.A4 is the wound certificate. The injuries sustained to him are:
>
> 1. Swelling deformity and abnormal mobility over middle 3rd of (L) arm;
>
> 2. Deformity abnormal mobility of middle 3rd of (L) thigh;
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> 3. Lacerated wound over lower 3rd of (L) leg 6 x 2 cm and
>
> 4. Lacerated wound over occipital region with contusion.
>
> X-ray revealed fracture of (L) humerus and fracture of

> left femur. CT scan revealed sub-arachnoid haemorrhage and subdural haematoma with severe brain oedema. Ext.A5 is the discharge card of Mr.Balan. He remained hospitalised from 21.12.1995 to 29.1.1996 i.e. for a period of about 40 days and that too in the ICU for the first 15 days of admission.
>
> The fracture femur was treated initially by tibial traction followed by interlocking nailing under general anesthesia. Humerus fracture (L) was treated by Seidel interlocking nailing. Petitioner had old fracture injury sustained while he was employed abroad. PW3 doctor certified 15% disability to the petitioner. Ext.A6 is the disability certificate. Whereas Ext.A7 is the certificate of Neuro surgeon of Mouland Hospital, who certified that petitioner sustained sub-arachnoid hemorrhage and thin subdural hemorrhage with severe brain oedema. Ext.A8 is the CT scan report. SAH and SDH were confirmed."

Again tribunal stated as follows:

> "The injuries sustained to petitioner Balan were serious. He sustained closed fracture of (L) humerus and fracture of left femur shaft; apart from suffering head injury with brain oedema SAH and SDH, petitioner had also bronchial plexus palsy. He remained hospitalised for about 40 days and incurred heavy medical expenses."

Tribunal did not award compensation on a scientific manner. But Rs.25,000/- was awarded for disability compensation and Rs.14,000/- for the head injury compensation. We are of the

view that tribunal should have assessed compensation on a multiplier method instead of granting compensation in an arbitrary manner. Ext.A6 disability certificate was not disputed and considering the injuries, 15% disability as certified by the doctor ought have been accepted by the tribunal and compensation was calculated.

3. He was a tailor by profession. Only Rs.1,500/- is taken as the monthly income. Considering the tailor's income, at least Rs.2,500/- ought have been fixed as the monthly income. If that be so, for 15% disability, compensation payable will be Rs.2,500 x 12 x 17 x $^{15}/_{100}$ = Rs.76,500/-. From that compensation awarded for disability and injury (Total Rs.39,000/-) has to be deducted. Balance will be Rs.37,500/-. Tribunal has also found that petitioner was unable to do any work and during the period of treatment, for five months, since we have assessed monthly income at Rs.2,500/-, he is entitled to another Rs.5,000/-. Even though it was argued that compensation granted under other heads were very meager, we are of the opinion that no further enhancement is

necessary. Thus additional compensation calculated is Rs.42,500/-. From the above, 25% has to be deducted for contributory negligence. Thus additional compensation payale will come to Rs.31,875/-. The above compensation shall be deposited by the 3rd respondent, Insurance company with 7.5% interest from the date of application till its deposit. Since the accident occurred in 1995, appellant is allowed to withdraw the amount. Appeal is accordingly partly allowed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.645 OF 2001 (A)

J U D G M E N T

21st August, 2007